

Remarks

Applicants' attorney wishes to thank the Examiner for her time during the Interview on December 30, 2009, in which proposed amendments were discussed. No agreement was reached as to allowable subject matter. However, the Examiner indicated that including limitations reciting that the wall is a support wall, the structure is wooden, the insulation barrier is cellulosic and the membrane is a single sheet of fire resistant wallboard would be considered.

The Office Action mailed November 25, 2009, has been carefully considered. After such consideration, independent Claims 1; 12; and 26 have been amended. In addition, corresponding dependent Claims 19, 22-24 and 42, 45-47 have been cancelled without prejudice and dependent Claims 20 and 43 have been amended to correct dependency. Thus, Claims 1-3 and 5-11; 12-18, 20 and 25; and 26-27, 29-41, 43 and 48 remain in the case with none of the claims currently being allowed.

Rejection of Claims 1-3, 5-20, 22-27, 29-43 and 45-48 Under 35 USC §103(a)

The Office rejects the above Claims as being unpatentable over Gebhardt *et al* in view of Mulford and ASTM E119-95a (the "Omega Reference" provided by Applicant). Withdrawal of this rejection and allowance is respectfully requested in view of the following remarks and the amendments to the claims.

Gebhardt is directed to what is commonly referred to as "party walls" – see e.g. Fig. 9. Such walls are not load bearing as is the present inventions (see e.g. Figs. 2 and 3 of the present application) and, if fact, the walls of the reference are factory assembled and shipped to the building site.

The walls of Gebhardt also are formed from "sheet metal channels and two layers of gypsum board applied on each side of the frame" see, e.g., Fig. 18 and col. 2, lines 37-40. In addition, the insulation material is an acoustic insulation (typical for "party walls") which is typically fiberglass insulation batts as set forth, for example, at col. 6, lines 10-13. Thus, it is not an organic thermal insulation barrier as recited in the claims of the present inventions.

Thus, the present inventions as set forth in the Claims recite an area separation support wall including:

- (i) an interior support structure or tying structure constructed of wood;
- (ii) only an outer membrane on each side of said interior support structure wherein each outer membrane is a single sheet of fire resistant wallboard; and
- (iii) a substantially cellulosic thermal insulation barrier between said outer membranes.

It is respectfully submitted that Gebhardt does not teach or suggest these limitations and that Gebhardt's shortcomings can not be cured by the secondary references since to do so would teach away from Gebhardt and destroy its intended purposes.

Also, previously discussed in the Response dated 12/4/08, the Omega Reference only teaches 47.5% design load. As set forth in the previously offered Declarations of Stewart and Trumbo, such a wall was not structurally and commercially acceptable.

For at least the reasons discussed above, Applicants believe the Office's rejections have been addressed and overcome and respectfully request allowance. However, if Applicants' attorney can assist in resolving any issue, the opportunity for a telephone interview would be welcomed.

Respectfully submitted,



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